MOTION FILED
AUG 14 2009

No. 08-1441

IN THE

Supreme Court of the United States

STANLEY BOIM, individually and as administrator of the ESTATE OF DAVID BOIM, deceased, and JOYCE BOIM,

Petitioners,

—v.—

MUHAMMAD ABDUL HAMID KHALIL SALAH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION OF THE ZIONIST ORGANIZATION OF AMERICA FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS AND BRIEF OF THE ZIONIST ORGANIZATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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MOTION OF THE ZIONIST ORGANIZATION OF AMERICA FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

The Zionist Organization of America (ZOA) respectfully moves this Court for leave to file the accompanying brief as *amicus curiae* in support of the Petition for a Writ of Certiorari submitted by Stanley Boim, individually and as administrator of the Estate of David Boim, deceased, and Joyce Boim.

Counsel of record received timely notice of the ZOA's intention to file an *amicus curiae* brief. In a written response, counsel for the Respondent, Muhammad Abdul Hamid Khalil Salah, did not consent to the filing of the brief, but indicated that Respondent would not object to its filing—a response which should weigh in favor of the Court granting the ZOA leave to file the brief.

The ZOA's interest in this case is based on our longstanding commitment to fighting international terrorism and advocating for justice for American terror victims. We have initiated and backed federal legislation that would hold accountable countries that promote and support terrorism, including the Saudi Arabia Accountability Act and the Syria Accountability Act. The ZOA has urged the U.S. government to seek and prosecute terrorists who have killed or harmed Americans overseas. We achieved a partial victory when the U.S. State Department posted information about wanted terrorists who had killed American citizens in the Middle East on the Department's Rewards for Justice Web site.

The ZOA has also fought terrorist use of the Internet. We helped bring about the shutdown of 10 Web sites that were promoting terrorism against Americans and Israelis.

The ZOA led a three-year effort for the passage of the Koby Mandell Act, which created a new office in the U.S. Department of Justice dedicated to investigating and prosecuting foreign nationals who have killed or harmed Americans overseas. The legislation was named for an American child who immigrated to Israel with his family in 1994. In 2001, while out hiking, 13-year-old Koby and a friend were stoned to death by Palestinian Arab terrorists. When the Act was passed in 2004, Sherri Mandell, Koby's mother, publicly thanked the ZOA and Congress "for initiating this fight for justice." Stephen Flatow, Esq., the father of Alisa Flatow, another American victim of Palestinian Arab terrorism, also publicly thanked the ZOA "for being the only organization to have made this Bill and this fight a priority and being relentless in their pursuit of justice."

The Petitioners' brief explains why the ruling of the Court of Appeals for the Seventh Circuit misapplies this Court's decision in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994). The Petitioners' brief also shows that there is conflict among the federal courts over whether this Court's decision in *Central Bank* applies to all instances of aiding-and-abetting liability.

The ZOA's proposed brief does not cover these matters. Rather, it focuses on the important public policy issues that necessitate a broad reading of 18 U.S.C. § 2333, which provides civil remedies to American victims of international terrorism. The

ZOA's brief shows that Congress intended Section 2333 to be construed broadly to include aider-and-abettor liability. The brief also discusses how imposing aider-and-abettor liability under Section 2333 will help us win the war against terrorism and ensure that American terror victims can obtain the fullest and fairest measure of justice.

For the foregoing reasons, the ZOA's motion for leave to file the attached brief as *amicus curiae* should be granted.

Respectfully submitted,

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BRIEF OF THE ZIONIST ORGANIZATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICUS CURIAE*

Amicus curiae is the Zionist Organization of America (ZOA), the oldest pro-Israel organization in the United States whose leaders have included U.S. Supreme Court Justice Louis Brandeis.[1] Founded in 1897, the ZOA has been on the front lines in combating terrorism and seeking justice for American terror victims.

The ZOA has initiated and supported legislation to hold accountable countries that support terrorism. The ZOA has fought terrorist use of the Internet, helping to shut down 10 terror-promoting Web sites. The ZOA also spearheaded the bill that became the Koby Mandell Act, which created an office in the U.S. Department of Justice dedicated to investigating and prosecuting foreign nationals who have killed or harmed Americans overseas.

In submitting this brief in support of the petition for a writ of certiorari, the ZOA seeks to ensure that anti-terrorism laws are enforced as intended by Congress, the war on terrorism proceeds full force by holding aiders and abettors of terrorism accountable for their conduct, and terror victims can obtain the justice they deserve.

[1] Counsel of record received timely notice of *amicus curiae*'s intention to file this brief. Respondent's counsel did not consent to the filing, but indicated that Respondent would not object to the filing. No counsel for a party authored this brief in whole or in part, and no one other than *amicus curiae*, its members, or its counsel made a monetary contribution to the brief's preparation and submission.

SUMMARY OF ARGUMENT

18 U.S.C. § 2333 should be construed to include aider-and-abettor liability in order to implement congressional intent, win the war against terrorism, and provide full and fair redress to terror victims.

ARGUMENT

I. Congress Intended Section 2333 to Cover Aider-and-Abettor Liability

18 U.S.C. § 2333 allows U.S. nationals injured "by reason of an act of international terrorism" to sue and recover treble damages. 18 U.S.C. § 2333(a). Congress defined "international terrorism" broadly, as "activities that . . . *involve* violent acts or acts dangerous to human life . . . ." 18 U.S.C. § 2331(1)(A) (emphasis added). The phrasing indicates congressional concern with all those who participate in violent or dangerous acts, not simply those who actually commit them.

Section 2333's legislative history supports this conclusion. See 136 Cong. Rec. S4568-01 at S4593 (1990) (statement of Sen. Grassley) (the legislation would "set an example to the world of how the United States legal system deals with terrorists. If terrorists have assets within our jurisdictional reach, American citizens will have the power to seize them."); S. Rep. No. 102-342, at 22 (1992) (the "provisions for compensatory damages, treble damages, and *the imposition of liability at any point along the causal chain of terrorism*," would "interrupt, or at least imperil, the flow of money") (emphasis added). Congress intended that not only

terrorist actors be held accountable, but also those who fund, support and enable them.

II. The War Against Terrorism Requires that Aiders and Abettors be Subject to Civil Liability

At the time that the Anti-Terrorism Act of 1990 was introduced, there were "several alarming trends in terrorist attacks against U.S. citizens over the course of the last ten years, during which time approximately 384 American citizens were killed." 136 Cong. Rec. S4568-01 at S4594 (1990) (statement of Sen. Heflin).

International terrorism remains of paramount concern. Approximately 700 Americans have been killed and 1,600 wounded in Mideast-based terror attacks since 1970. Jewish Virtual Library, *American Victims of Mideast Terrorist Attacks*, http://www.jewishvirtuallibrary.org/jsource/Terrorism/usvictims.html (last visited Aug. 12, 2009). Since the late Yasser Arafat, leader of the Palestinian Arab people, supposedly renounced terrorism as part of the 1993 Oslo Peace Accords, at least 53 Americans have been murdered and at least 83 Americans have been injured by Palestinian Arab terrorism. *Id.*

In 2008 alone, there were five U.S. citizen kidnappings, and 33 U.S. citizen fatalities, as the result of terror attacks internationally. National Counterterrorism Center, *2008 Report on Terrorism* 25, 32 (Apr. 30, 2009).[2]

[2] The National Counterterrorism Center (NCTC) was established in 2004 by Executive Order. *See* Exec. Order No. 13,354, 69 Fed. Reg. 53,589 (Aug. 27, 2004). The NCTC was then authorized by statute. *See* 50 U.S.C. § 404o. Pursuant to the law, the NCTC serves as the U.S. Government's "knowledge bank on

In 2007, 19 U.S. citizens worldwide were reported killed as a result of incidents of terrorism, and 17 U.S. citizens were reported kidnapped. *National Counterterrorism Center: Annex [to the 2006 Country Reports on Terrorism] of Statistical Information* at 8 (2007), http://www.state.gov/s/ct/rls/crt/2007/103716.htm.

Holding aiders and abettors of terrorism liable for their conduct is one of several fronts on which the United States must fight the war against terrorism. *See* Debra M. Strauss, "*Reaching Out to the International Community: Civil Lawsuits as the Common Ground in the Battle Against Terrorism*," 19 Duke J. Comp. & Int'l L. 307, 310 (2009) (characterizing civil suits as a "nonmilitary approach" to compensate terror victims and also "potentially deplete the assets and financial support for future terrorist acts"). We cannot win this war unless we not only hold terrorist actors accountable, but also those who enable them to achieve their illegal goals.

III. It Would Be Illogical and Unjust to Preclude Salah's Liability Under Section 2333

The Court of Appeals for the Seventh Circuit concluded that because Respondent Muhammad Salah was imprisoned at the time that 18 U.S.C. § 2339A was enacted, he cannot be held liable under Section 2333 for having aided and abetted Hamas' terrorism that led to David Boim's murder. This conclusion is illogical and unjust.

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international terrorism." NCTC 2008 Report at 1. The NCTC acknowledges the difficulty of tracking and collecting information about terror attacks (*id.* at 1-3), but considers the tracking system it uses to be "a valuable tool for facilitating empirical research on terrorism." *Id.* at 3.

The Seventh Circuit acknowledged that there could be liability under Section 2333 for aiding and abetting terrorism, when the aiding and abetting occurred in 1995, and an American is killed abroad 50 years later, in 2045. *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685, 699-700 (7th Cir. 2008). According to the court, such a situation would not raise a statute of limitations problem, because the statute would not begin to run until the tort's commission, "and that would not occur until the injury on which suit was based was inflicted." *Id.* at 700. The court reasoned that "[t]errorism campaigns often last for many decades" and "[s]eed money for terrorism can sprout acts of violence long after the investment." *Id.*

While that reasoning is consistent with Congress' intention to give American victims of terrorism the full range of civil remedies to redress their injuries, it is inconsistent with the Seventh Circuit's analysis of Respondent's liability under Section 2333. Despite the integral role he played in Hamas' terrorist operations, the Seventh Circuit concluded that Salah cannot be liable for his contribution to David Boim's murder because Salah was imprisoned at the time that Section 2339A was enacted.

Salah was the admittted U.S.-based leader of Hamas' military branch. *Matter of Extradition of Marzook*, 924 F. Supp. 565, 587 (S.D.N.Y. 1996). There is evidence that he recruited and trained terrorists, channeled funds to Hamas operatives, and helped reorganize and restaff Hamas military cells in Israel. *United States v. One 1997 E35 Ford Van VIN 1FBJS31L3VHB70844*, 50 F. Supp. 2d 789,793-94 (N.D. Ill. 1999).

Section 2339A, a statute creating criminal liability, should be no obstacle to Salah's civil liability under Section 2333. Salah was a moving force behind Hamas' terrorist operations, which led to David Boim's death and continued after Salah's imprisonment. *See United States v. Cohen*, 260 F.3d 68, 77-78 (2d Cir. 2001) (defendant could be liable for aiding and abetting his company's criminal acts occurring after his arrest, where defendant was "a moving force" behind the company's operation, which continued functioning post-arrest).

Interpreting Section 2333 to preclude Salah's liability is illogical and unjust for a second reason. The Seventh Circuit's interpretation of Section 2333 left all of the defendant entities in this case subject to civil liability under the law, even though they claim that they directed their support principally to Hamas' health, educational, and other social welfare services. *See Boim*, 549 F.3d at 698. Yet the Seventh Circuit relieved Salah from liability, even though he alone among the defendants directed his support exclusively to Hamas' military and terrorist activities. *See id.*

Salah's contributions to Hamas were very useful to Hamas in carrying out its terrorist operations that led to David Boim's murder, even though Salah was incarcerated for a period of time. Enforcing Section 2333 against Salah and other aiders and abettors of terrorism will ensure that victims like the Boims will obtain the fairest measure of justice.

CONCLUSION

For the foregoing reasons, this Court should grant the Petitioners' application for a writ of certiorari.

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